



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2004

Ms. Caroline Kelley
Assistant City Attorney
Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2004-4585

Dear Ms. Kelley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202421.

Missouri City (the "city") received a request for documents relating to the seizure by the police of property at a named address. You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. In addition, we understand you to assert that a portion of the submitted information is excepted from disclosure under section 552.101. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you contend that some of the information in Exhibit B is not responsive to the request for information. Specifically, you argue pages 18 through 31 of the offense report in Exhibit B are responsive to the request, but that the remainder of the report is not responsive. The requestor seeks, among other things, "all documents relating to" the seizure of property at the named address as a result of a number of offenses. The offense report in Exhibit B is titled "Missouri City Offense Report" for case number 1-03-01950. The front page information of this report includes five individual offense reports: one for each of five criminal offenses being investigated. The requestor asks for all information regarding three of these offenses. Although these five offense reports within the "Missouri City Offense

Report” are separated, and each has its own unique basic information, we find all five to be part of one offense report. We note, for example, that each of the five offense reports has the same case number. Therefore, although the requestor seeks information regarding only three of the five alleged offenses, the entire offense report constitutes “documents relating to” seizure of the property, and thus is responsive to his request.

Next, we note that the submitted information includes an arrest warrant and an affidavit supporting a search warrant.

Article 15.26 of the Code of Criminal Procedure states the following:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate’s clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk’s office during normal business hours.

Therefore, the arrest warrant is made public under article 15.26.

Article 18.01 of the Code of Criminal Procedure provides in part the following:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate’s clerk shall make a copy of the affidavit available for public inspection in the clerk’s office during normal business hours.

Crim. Proc. Code art. 18.01(b). Thus, when a search warrant has been executed, the supporting search warrant affidavit must be released under article 18.01(b). Here, the submitted affidavit relates to a search warrant that has been executed; therefore, the search warrant affidavit is expressly public under article 18.01(b) of the Code of Criminal Procedure.

You contend that sections 552.101, 552.108, and 552.130 of the Government Code except from release some of the information in the arrest warrant and search warrant affidavit. However, exceptions to disclosure under the Act generally do not apply to information that is made public by other statutes, such as articles 15.26 and 18.01 of the Code of Criminal

Procedure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).¹ Therefore, none of the information in the search warrant affidavit or the arrest warrant may be withheld under section 552.101, 552.108, or 552.130, and these records must be released without redaction.

We also note that the submitted information contains a search warrant that has been executed and filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Therefore, the search warrant is made public under section 552.022(a)(17). You contend that sections 552.108 and 552.130 of the Government Code except from release some of the information in the search warrant. Section 552.108 of the Government Code is a discretionary exception, and is not "other law" for purposes of section 552.022(a)(17); therefore, none of the information in the search warrant affidavit may be withheld under section 552.108. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, section 552.130 is considered to be "other law" for purposes of section 552.022(a)(17); therefore, we will address the applicability of this exception to the search warrant.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, section 552.130 requires you to withhold the Texas driver's license and license plate numbers, which you have marked, in the search warrant.

We turn now to your arguments regarding section 552.108 for the remaining information that is not made public by statute or subject to release under section 552.022(a)(17). Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably

¹We note we contacted the city regarding the possible sealing by court order of these records, but to date we have received no indication that any of the records at issue have been sealed. *See generally* Tex. R. Civ. Proc. 76a (procedural mechanism for sealing court records).

explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the offense report and other information in Exhibits B and C would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identities of the arresting officers. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*).

You assert that some of the arresting police officers are undercover officers, and that public disclosure of the identities of these undercover officers would cause the officers to face an imminent threat of physical danger. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 of the Government Code in conjunction with common law privacy on a showing of "special circumstances." See, e.g., Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to Gov't Code § 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (1978) (statutory predecessor protected identities of members of attorney general's Organized Crime Task Force engaged in undercover narcotics work). This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You contend that, if the identity of an undercover officer in the submitted information is released to the public, the officer would face an imminent threat of physical danger. However, based on our review of your arguments and the information, we find you have not shown the existence of special circumstances that would make any of the requested information confidential. Thus, all of the basic information in the offense report, including the identity of the arresting officers, must be released to the requestor; however, you may withhold the remaining submitted information from disclosure based on section 552.108(a)(1).² We note that you have the discretion to release any part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

²Because basic information does not include information that is excepted from release under section 552.130, we do not address this argument for exception.

To conclude, (1) the arrest warrant and search warrant affidavit must be released to the requestor in their entirety, (2) all but the Texas driver's license and license plate numbers in the search warrant must be released to the requestor, and (3) all but the basic information in the remaining records is excepted from release under 552.108. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

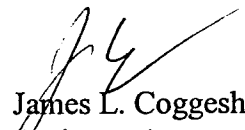
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 202421

Enc. Submitted documents

c: Mr. Larry P. McDougal
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(w/o enclosures)